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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Yasuyuki Ishii

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EXAMINER

HOWARD, ZACHARY C

ART UNIT

PAPER NUMBER

1646

MAIL DATE

DELIVERY MODE

07/24/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10551488	9/29/05	ISHII ET AL.	2008_0997

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EXAMINER

ZACHARY C. HOWARD

ART UNIT	PAPER
1646	20090722

DATE MAILED:

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Commissioner for Patents

The amendment filed on 5/12/09 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because each reads solely a non-elected invention.

The original restriction requirement was mailed 5/14/08. Under the section titled "Note", it was stated that "Claim 8 is drafted in terms of "use of a polypeptide"; however, "use" is not a statutory class of invention. As "use" is non-statutory subject matter and is not patentable, and no method steps are recited, claim 8 has been interpreted as a claim to a polypeptide. Thus, claim 8 was placed in Group I, claims 1, 2, 7, 8, 10-12, 14-16 and 18, drawn to a modified thioredoxin polypeptide and a complex, anti-cancer agent, anti-cancer enhancer or composition comprising said polypeptide. Groups II-IV were directed to different product or method inventions.

In the 11/12/08 Office Action (pg 2), Applicants' election of Group I, claims 1, 2, 7, 8, 10-12, 14-16 and 18 in the reply filed 5/14/08 was acknowledged (The election was treated as an election without traverse). Claims 3-6, 9 and 13 were withdrawn from consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. As noted in the restriction requirement, claim 8 was treated as a product claim and examined with the other polypeptide claims of Group I, including rejection at pg 13 under 35 USC § 102 as anticipated by the thioredoxin polypeptide taught by Liu et al (2002).

In the amendments to the claims filed on 5/12/09, Applicants cancelled claims 1, 2, 7, 10, 11, 14-16 and 18 (no new claims are added). Thus, claims 8 and 12 remain pending in the elected group. However, Applicants have amended these claims such that they are no longer directed to the subject matter of the elected group (thioredoxin polypeptides). Specifically, independent claim 8 (from which claim 12 now depends) has been amended such that it is now drawn to a method "for cell internalization of a biologically active substance" comprising contacting target cells with a biologically active substance and a polypeptide. Such a method of use constitutes a different invention (method of use) from that originally elected, and lacks unity with the invention of Group I for the same reason as set forth in the original restriction requirement (5/14/08, pg 3).

Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachary C. Howard whose telephone number is 571-272-2877. The examiner can normally be reached on M-F 9:30 AM - 6:00 PM.
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary B. Nickol can be reached on 571-

272-0835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Bridget E Bunner/
Primary Examiner, Art Unit 1647